

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
CIVIL ACTION NO. 10-CV-274-WO-WWD**

BASF AGRO B.V., ARNHEM (NL),  
WÄDENSWIL BRANCH, BAYER  
S.A.S., and MERIAL LIMITED,

Plaintiffs,

v.

CHEMINOVA, INC.,

Defendant.

**MOTION TO FILE DOCUMENTS  
UNDER SEAL**

Plaintiffs BASF AGRO B.V., ARNHEM(NL), WÄDENSWIL BRANCH, BAYER S.A.S. and MERIAL LIMITED (hereinafter “Plaintiffs”) hereby move the Court to file under seal (i) Plaintiffs’ Opening Claim Construction Brief and (ii) Exhibits 33 and 34 appended thereto in Plaintiffs’ Appendix filed therewith.

In support of this Motion, Plaintiffs state as follows:

Plaintiffs entered into a Stipulated Protective Order (“the Protective Order”) entered by the Court on August 27, 2010. [Docket #40]. Paragraph II.B.1 of the Protective Order defines “confidential information” as non-public information that involves the personal or privacy interests of individuals under the laws where such individuals reside. Paragraph II.B.2 of the Protective Order defines “highly confidential information” as confidential information whose disclosure would be likely to cause harm to the competitive position of the producing party.

Paragraphs VIII.2 and VIII.3 of the Protective Order states that a party may file documents under seal with the Court if it is necessary to submit confidential or highly confidential material.

Plaintiffs' Opening Claim Construction Brief and Exhibits 33 and 34 of Plaintiffs' Appendix filed therewith contain highly confidential information of Defendant Cheminova, Inc.'s under the protective order. While Plaintiffs are committed to the principle that this judicial proceeding, like any other, should be largely open to the public and on the public record, it is entirely appropriate for the Court to seal information relating to expressly confidential information. Public disclosure of this information may result in harm to Defendant. The inability to file such highly confidential information under seal would make it virtually impossible to conduct an action of this nature and would serve no public purpose.

WHEREFORE, Plaintiffs move this Court to file and retain under seal Plaintiffs' Opening Claim Construction Brief, the Exhibits appended thereto, and Plaintiffs' Appendix filed therewith.

Respectfully submitted this 13th day of December, 2010.

/s/ Pressly M. Millen

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## **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the **MOTION TO FILE DOCUMENT UNDER SEAL AND PROPOSED ORDER** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants: Daniel Alan M. Ruley, [aruley@belldavispitt.com](mailto:aruley@belldavispitt.com), William K. Davis, [wdavis@belldavispitt.com](mailto:wdavis@belldavispitt.com), Christopher G. Kelly, [christopher.kelly@hkclaw.com](mailto:christopher.kelly@hkclaw.com), Steven L. D'Alessandro, [steven.dalessandro@hkclaw.com](mailto:steven.dalessandro@hkclaw.com), Robert J. Burns, [robert.burns@hkclaw.com](mailto:robert.burns@hkclaw.com), Joshua C. Krumholz, [Joshua.krumholz@hkclaw.com](mailto:Joshua.krumholz@hkclaw.com), Jitendra Malik, [jmalik@alston.com](mailto:jmalik@alston.com), John Patrick Elsevier, [jpelsevier@jonesday.com](mailto:jpelsevier@jonesday.com), Matthew W. Howell, [matthew.howell@alston.com](mailto:matthew.howell@alston.com), Judy C. Jarecki-Black, [jduy.jarecki@merial.com](mailto:jduy.jarecki@merial.com), and Frank G. Smith, [frank.smith@alston.com](mailto:frank.smith@alston.com).

DATED: December 13, 2010.

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